IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER No. 1016 of 2005

Daji N. Hatankar .. Appellant

versus

Mumbai Municipal Corporation of Gr.Mumbai & ors. .. Respondents

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Mr.P.N. Kulkarni for the appellant.

Mr.R.A. Malandkar for respondent no.1.

Mr.A.K. Abhyankar, Sr. Advocate with Mr.A.L. Patki for respondent no.2.

CORAM : D.G. KARNIK, J

DATED : 12th December 2006

P.C.:

1. This appeal is directed against the common order dated 28th September 2005 passed by the learned Judge of the City Civil Court, Mumbai dismissing the

motion no.131 of 2006 taken out by appellants for injunction restraining the respondent no.1 municipal corporation from demolishing the suit structure and the motion no.2139 of 2005 seeking permission of repairs.

2. This litigation is a classic example of the manner in which the appellants have been able to protect the illegal structure erected by them by filing various proceedings in various courts

3. The property known as "Shanta Kunj" situate at Ram Mandir road, Vile Parle(E), Mumbai belongs to M/s.Shweta Enterprises, the respondent no.2 herein. The appellants were in occupation of two unauthorised structures erected in the compound of Shanta Kunj. The appellants claim to have acquired the said two structures in the year 1975 from Mr. Gokuldas Shah. However, expect for the averments that they had acquired the premises in the year 1975 from Gokuldas Shah there are no averments as to the title of Mr. Gokuldas Shah nor have the appellants disclosed the sale deed or any other document under which the said structures were allegedly acquired by them. It however appears that the two unauthorised structures in the compound of Shanta Kunj were in occupation of the

appellants since prior to the year 1986.

4. The respondent no.2 had been complaining to the municipal authorities about the illegal structures in possession of the appellants. When the respondent no.1 municipal corporation proposed to demolish one of the unauthorised structures, the appellant no.1, who is the husband of appellant no.2, filed a suit against the respondent no.1 for an injunction and prayed for an interim injunction restraining the demolition. The City Civil Court rejected the application wherefrom the appellants filed an appeal bearing appeal bearing AO no.78 of 1987 in this court. By an order dated 12th February 1987, this Court dismissed the appeal. Thereafter, the appellant no.1 moved this court again with an undertaking to demolish the premises forming subject matter of that suit i.e. one structure admeasuring 20’ x 70’ situate in the compound of Shanta Kunj, by 31st December 1987. The Court accepted the undertaking. Instead of demolishing one more attempt was made by the appellants for protecting the illegal structure. The appellant no.2, who is wife of the appellant no.1, filed a suit bearing suit no.39 of 1988 in the City Civil Court alleging that there were

serious disputes and differences between the husband and the wife and that she would be thrown on the streets and without any shelter if the suit structure was demolished. Since the appellant no.1 had given an undertaking to this court to remove the structure by 31st December 1987, it appears that the appellant no.1 put up his wife the appellant no.2, who filed the suit to protect the suit structure alleging differences between them. When the motion taken out by the appellant no.2 in suit no.39 of 1988 appeared before the Court on 28th February 1988, statement was made by the respondent no.1 municipal corporation that the suit structure mentioned therein was already demolished by it. It however appears that some portion of the demolished structure was re-erected by the appellants which was also demolished by the respondent no.1 on or about 25th February 1988 after dismissal of the motion. The appeal bearing AO No. 94 of 1989 was also dismissed by a Single Judge of this Court. However on humanitarian grounds, showing mercy, this Court granted protection against demolition of the structure upto 31st December 1989. Taking advantage of the limited protection granted by this Court, the appellant no.2 again approached the respondent no.1 pleading humanitarian indulgence and sympathy and protection of

the illegal structures. The respondent no.1 on humanitarian grounds stayed demolition of the temporary structure for some time. It appears that taking advantage of the said mercy, the appellants extended the structure from one single room to multiple rooms and inducted third parties therein for personal gains.

5. In the mean while, the suit filed by the appellant no.2 herein was dismissed by the City Civil Court on 2nd May 1991. Even though the suit was dismissed, the structures which were erected by the appellants continued to occupy the open space in the compound of Shanta Kunj. Being dissatisfied by the inaction of the respondent no.1 in demolishing the unauthorised structures erected by the appellants, the respondent no.2 filed a Writ Petition, bearing WP no.1491 of 2003, against the respondent no.1 municipal corporation and the appellants for necessary directions to demolish the unauthorised structures. After hearing the parties, by an order dated 6th January 2006, a Division Bench of this Court directed the respondent no.1 municipal corporation to take appropriate action in respect of the offending structures in accordance with law after giving appropriate notice to the appellants herein. Accordingly, respondent no.1 issued

two notices. One dated 27th December 2004 u/s.55(1) of the Maharashtra Regional Town Planning Act 19966 (for short "MRTP Act") and another dated 1st January 2005 u/s.351 of the MMC Act. Apprehending that the respondent no.1 would take action and demolish the offending structures in pursuance of the said notices, the appellants filed a suit bearing L.C. Suit no.97 of 2005 in the City Civil Court for an injunction restraining the demolition of the said structures. In the suit, the appellants took out two motions, bearing N.M.no.131 of 2005 and N.M.2131 of 2005 for interim reliefs of injunction against demolition and for permission for repairs to the said structures. By the order dated 28th September 2005, the learned Judge dismissed both the motions. That common order is impugned in this appeal.

6. From the pleadings of the parties and submissions made by the counsel for the appellants, it is clear that the case of the appellants was that there were initially two structures erected in the compound of Shanta Kunj. According to the appellants one structure was demolished in the year 1987-88 in pursuance of the undertaking given by the appellant no.1 to this court on 12th February 1987 in AO no.78 of

1987. Therefore, after the year 1987, there was only one structure, though the appellants appear to have re-erected a portion of the structure which was demolished in pursuance of the undertaking. Second structure in respect of which the suit notices were issued on 17th December 2004 and 1st January 2005 has been demolished by the respondent no.1 municipal corporation on 18th January 205. Learned counsel for the respondent no.1 municipal corporation submitted that the cause of action of the suit has come to an end as the unauthorised structure has been demolished by the respondent no.1 on 18th January 2005. Learned counsel for the appellants admitted that the suit structure was demolished by respondent no.1 on 18th January 2005 but submitted that the entire structure was not demolished and part of the structure still exists. It appears that the respondent no.1 had demolished all the structures on 18th January 2005 but the appellants have re-erected part of the structure and now claim that only part of the structure has been demolished. If the officers of the respondent no.1 had gone to the suit site on 18th January 2005 for demolition, as admitted by the counsel for the appellant, there was no reason for them to demolish only part of the structures and that too after the

directions given by this court in Writ Petition no.1294 of 2003 to take action of demolition in accordance with law. The appellants are dishonest persons who after having erected the unauthorised structures and after giving an undertaking to the Court to demolish atleast one of the two unauthorised structures appear to have reconstructed the structures more than once after they were demolished. The conduct of the appellants is reprehensible and that itself is a ground for denial of the equitable relief of injunction.

7. There are other reasons also for which the appellants are not entitled to the interim relief of an injunction. Notice under section 55 of the MRTP Act was issued to the appellants on 27th December 2004. Section 55 of the MRTP Act enables the planning authority - the respondent no.1 - to remove any unauthorised structure or work. Section 149 of the MRTP Act interalia provides that every order passed or directions issued by the planning authority or the development authority under the Act, shall be final and shall not be called in question in any suit or other legal proceedings. Thus, jurisdiction of the civil court to entertain a suit challenging the notice u/s.55 of the MRTP Act is clearly barred. The suit itself is

not maintainable. The appellants are therefore not entitled to any interim relief in the suit which is not maintainable.

8. Reference was made by the learned counsel for the appellants to the circular dated 27th October 1996 issued by the Addl. Municipal Commissioner to the Dy. Municipal Commissioners, Ward Officers and Assistant Engineers working under him regarding the manner in which the unauthorised structures should be demolished. Clause (1) of the said circular states that structures which had come up prior to 1st January 1995 should not be demolished. Strongly relying upon this circular counsel for the appellant submitted that as the suit structure is in existence prior to 1987, the structure cannot be demolished. There is some dispute about the applicability of the circular to all unauthorised structures. According to the respondent no.1, the said circular applies only for unauthorised residential huts which have been declared as slums under the Slums Improvement Act; only the unauthorised residential huts erected prior to 1st January 1995 and located in a slum are protected. Other structures are not protected. It is however not necessary, in the facts of this case, to consider this submission because the

appellants structure which is presently standing clearly appears to have erected after 1st January 1995. Even according to the appellants, there were two structures. The first structure was demolished by them in the year 1987-88 in pursuance of the undertaking given to this court on 12th February 1987 in Appeal from order no.78 of 1987. The second structure was demolished by the respondent no.1 municipal corporation on 18th January 2005. So whatever the structures which are presently standing have been erected and reconstructed by the appellant subsequently. These are obviously new structures which are not protected even under the circular dated 17th December 1996.

9. For these reasons, there is no merit in the appeal which deserves to be dismissed. Accordingly, appeal is dismissed with costs which are quantified at Rs.10,000/-.

10. Before parting, I can only express hope that if any unauthorised structures have been erected/ re-erected by the appellants, the respondent no.1 municipal corporation would again demolish the structures as directed by the Division Bench of this Court in Writ Petition bearing WP No. 1294 of 2003.

(D.G. KARNIK, J)